

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 16 July 2007

CASE No. 2006-STA-50

LARRY TEVEPAUGH,
Complainant,

v.

J & B EXPRESS TRUCKING,
Respondent

RECOMMENDED ORDER OF DISMISSAL

The above-captioned case arises under the Surface Transportation Assistance Act (STAA), as amended, 49 U.S.C. Section 31105 and the Regulations found at 29 C.F.R. Part 1978.

On September 26, 2006, Complainant filed a request for a hearing with this Office in the above-captioned matter. Complainant contended that Respondent terminated him as the Safety Director because he reported concerns that the drivers were driving over the Department of Transportation regulated hours of service.

On January 30, 2007, this undersigned sent out an Order requiring the Complainant and Respondent, in the above-captioned case, to be available for a conference call. This conference call was scheduled for Tuesday, February 6, 2007 at 10:00 a.m. On February 6, 2007, at approximately 10:00 a.m., Respondent was available for the conference call. However, when this office contacted the Complainant, Larry Tevepauh, he stated he was at a doctor's appointment and stated he was not available at that time. This office inquired as to when we could call him back, and he hung up the phone.

A hearing in this matter was scheduled in Farmington Hills, Michigan at 10:00 a.m. on June 5, 2007, at which time the Complainant failed to appear. After a deliberate delay in opening the record to afford the Complainant an opportunity to appear, the undersigned opened the hearing record at 10:35 a.m. on June 5, 2007 and requested the appearances of the parties. The Complainant was not present and did not appear at that time; nor had he arrived on or before 11:00 a.m., by the undersigned's observation, before leaving the courthouse. However, Joann Balk (now Joann Figana), owner/representative at the time of the filing of the complaint of J & B Express

Trucking (Respondent) did appear pro se, and informed the undersigned that she was prepared to testify and present documents at the hearing, although she did not have an attorney or representative at the hearing.

On June 6, 2007, this Office issued an Order requiring the Claimant to Show Cause within two weeks why this matter should not be dismissed pursuant to 29 C.F.R. § 18.6(d)(2)(v) for failing to appear at the hearing scheduled for June 5, 2007. To date, Claimant has failed to respond to this Order. Claimant has thus far failed to comply with such order.

Title 29 C.F.R. § 18.6(d)(2)(v) provides where a party fails to comply with any order of the administrative law judge, the judge may:

[r]ule that a pleading, or a part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Accordingly, after reviewing the record and considering Claimant's failure to participate further in this matter, I hereby **ORDER** that the Complainant's request for a hearing in this matter is **DISMISSED** and **JUDGEMENT BY DEFAULT** is entered against him.

SO ORDERED.

A

THOMAS F. PHALEN, JR.
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.

